

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

DR. ORLY TAITZ, ESQ.,	§	
	§	
Plaintiff,	§	
	§	
v.	§	Case No. 3:12-cv-03251-P
	§	
KATHLEEN SEBELIUS, Secretary,	§	
Health and Human Services, <i>et al.</i> ,	§	
	§	
Defendants.	§	

**FEDERAL GOVERNMENT DEFENDANTS' RESPONSE IN OPPOSITION TO
PLAINTIFF'S "PETITION FOR STAY"**

Defendants President Barack Obama; Kathleen Sebelius, Secretary of Health and Human Services; Michael Astrue, Commissioner of Social Security; Eric Holder, Attorney General of the United States; and William A. Chatfield, past director of the Selective Service (collectively the "Federal Government Defendants") hereby submit this response in opposition to Plaintiff Orly Taitz's "petition for stay certification of votes for Candidate Obama pending decision of the panel of Multi-district litigation and pending resolution of underlying controversy on the merits," filed on October 9, 2012 at Docket No. 17. Because the Judicial Panel on Multidistrict Litigation ("JPML" or "the Panel") has struck Taitz's "Motion to Coordinate and Consolidate Cases," there is no grounds on which to stay this action – let alone a "certification of votes" – and Taitz's motion should be denied.

Initially, the defendants note that Taitz has already moved for a preliminary injunction in this case, and in many ways her latest filing is no more than a second attempt to obtain preliminary relief from this Court. For the reasons set forth in the defendants' opposition to that motion, *see* Dkt. 14, and in the defendants' motion to dismiss, *see* Dkt. 15, Taitz is not entitled to

preliminary relief (or any relief whatsoever) in this case. She has failed to establish jurisdiction or venue in this Court, failed to show a likelihood of success on the merits of any of her claims, failed to show that she is likely to suffer irreparable harm, and failed to establish any of the other elements necessary for preliminary relief.

In her new motion, Taitz seeks a stay based on the fact that she has filed a petition with the JPML seeking to coordinate this case and two others. To the extent Taitz seeks to stay this litigation, her motion is without merit.¹ On October 11, 2012, Taitz filed a petition with the Panel, seeking the consolidation of this case with *Judd v. Obama*, Case No. SACV 12-1507-DOC (C.D. Cal.) and *Taitz v. Democrat [sic] Party of Mississippi*, Case No. 3:12-cv-00280 (S.D. Miss.). But that petition was not properly filed. After giving her notice and an opportunity to cure “major deficiencies” in her filing, *see* MDL Case No. 2417, Dkt. 3 (Oct. 12, 2012), the Panel struck Taitz’s pleading on October 31, 2012, *see* MDL Case No. 2417, Dkt. 4 (Oct. 31, 2012) (attached as Ex. 1).²

¹ It is frankly unclear what Taitz’s motion seeks to stay, in part because of her failure to include a proposed order. But to the extent Taitz is asking for “an emergency STAY of the certification of 2012 votes for candidate Obama,” Pl.’s Mot. 3, her request is frivolous and wholly without merit. This case has literally nothing to do with any “certification of votes.” The relief sought in Taitz’s complaint includes declaratory and injunctive relief regarding the operation of the Patient Protection and Affordable Care Act, along with declaratory relief and damages associated with Taitz’s allegations under RICO. Taitz’s complaint seeks no injunctive relief regarding any election, nor do the parties include any state official able to provide such relief or any other candidate who might be affected by such relief. *See* Pl.’s Compl. 31-33. There would thus be no basis to enter such extraordinary relief, even if Taitz could defeat overwhelming jurisdictional defects, demonstrate a likelihood of success on the merits of her claims, establish that she is likely to suffer irreparable harm absent entry of a stay, and overcome the extraordinary public interest in the denial of her motion.

² Additionally, after Taitz filed her petition, Judge David O. Carter issued an order *sua sponte* dismissing *Judd v. Obama* for lack of subject matter jurisdiction, on the ground that the plaintiffs had removed their own case from California State Superior Court. *See Judd*, Dkt. 34, Order of Oct. 17, 2012 (attached as Ex. 2).

It is worth noting that, in the event Taitz re-files her petition, there will still be no reason to delay ruling on the defendants' motion to dismiss. "The pendency of a motion to transfer before the JPML does not divest a court of jurisdiction over the case." *Curtis v. BP America, Inc.*, 808 F. Supp. 2d 976, 978 (S.D. Tex. 2011). *See also* JPML Rule of Procedure 2.1(d), available at <http://www.jpml.uscourts.gov/sites/jpml/files/Panel%20Rules-Amended-7-6-2011.pdf> ("The pendency of a motion . . . pursuant to 28 U.S.C. § 1407 does not affect or suspend orders and pretrial proceedings in any pending federal district court action and does not limit the pretrial jurisdiction of that court.").

Judicial economy will not be served by dragging this case out based on an unrealistic notion that it may be coordinated or consolidated with another matter. Instead, for the reasons set forth in the defendants' motion to dismiss, Taitz's complaint should be dismissed in its entirety.

Dated: November 1, 2012.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that, on November 1, 2012, I electronically filed the foregoing document with the Clerk of Court for the United States District Court for the Northern District of Texas using the Court's electronic case filing system. That system sends a "Notice of Electronic Filing" to the following *pro se* plaintiff:

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/s/ Scott Risner

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